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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT BOSCH HEALTHCARE
SYSTEMS, INC.,

No. C-14-1575 EMC

Plaintiff,

**ORDER DENYING PLAINTIFF'S
MOTION TO DISQUALIFY
MERCHANT & GOULD**

v.

CARDIOCOM, LLC, *et al.*,

(Docket No. 59)

Defendants.

Plaintiff Robert Bosch Healthcare Systems, Inc. (“RBHS”) has filed suit against Defendant Cardiocom, LLC, asserting that Cardiocom has infringed six of its patents. Currently pending before the Court is RBHS’s motion in which it seeks to disqualify the Merchant & Gould (“M&G”) law firm from representing Cardiocom. Having considered the parties’ briefs and accompanying submissions, as well as the supplemental papers filed and lodged, the Court hereby **DENIES** the motion to disqualify.

I. FACTUAL & PROCEDURAL BACKGROUND

RBHS appears to be a relatively new company, having been incorporated in December 2011. *See* Docket No. 81-2 (McDonald Decl., Ex. N). RBHS, however, belongs to a well-established group of companies, many of which (but not all) have the name “Robert Bosch” in their name. Robert Bosch GmbH is the main company, located in Germany. Robert Bosch North America Corporation is a subsidiary of Robert Bosch GmbH. Robert Bosch North America Corporation in

1 turn has a number of wholly owned subsidiaries, one of which is RBHS. *See* Docket No. 60 (Taylor
 2 Decl. ¶¶ 3-4).

3 It appears that M&G began doing work for some of the Bosch entities in 2002 (well before
 4 RBHS was incorporated in December 2011).¹ *See* Docket No. 60 (Taylor Decl. ¶ 9). One of the
 5 entities that M&G worked for was Robert Bosch Corporation, now known as Robert Bosch LLC.
 6 According to RBHS, “[a]ttorneys at Robert Bosch LLC oversee and are responsible for all legal
 7 issues of the Bosch affiliated entities in North America, including, without limitation, intellectual
 8 property issues” and intellectual property litigation. Docket No. 60 (Taylor Decl. ¶ 5); Docket No.
 9 116-3 (Supp. Taylor Decl. ¶ 4).

10 From 2002 to 2007 (and many years beyond), M&G continued to work for various Bosch
 11 entities. *See* Docket No. 60 (Taylor Decl. ¶ 9). Notably, M&G represented different Bosch entities
 12 in at least six patent litigation lawsuits. *See* Docket No. 60 (Taylor Decl. ¶ 11).

13 In September 2007, Sarah Taylor, Chief Counsel of Intellectual Property at Robert Bosch
 14 LLC, sent a retainer agreement for “General Legal Services” to M&G. *See* Docket No. 60-1 (Taylor
 15 Decl., Ex. A) (agreement). The agreement states in relevant part as follows:

- 16 • “This letter confirms that we have selected your firm as a provider of legal services for one
 17 or more of the Bosch affiliated entities in North America (‘Company’).”
- 18 • “It is the Company’s intention to retain your services for General Legal Services on an as
 19 needed basis.”
- 20 • “Before rendering any services in connection with a specific assignment, please determine
 21 and confirm . . . that no actual or potential conflicts of interest exist[] with respect to
 22 representation of the Company by you.”

23 Docket No. 60-1 (Taylor Decl., Ex. A) (Agreement at 1-2). M&G accepted the retainer agreement
 24 in October 2007. *See* Docket No. 60-1 (Taylor Decl., Ex. A) (Agreement at 3). At the time of the
 25 retainer agreement, RBHS was not a Bosch affiliated entity in North America because it did not yet
 26 exist.

27
 28 ¹ At the time that M&G began working for the Bosch entities, it had already done some work
 for Cardiocom (patent prosecution in 1999). *See* Docket No. 80 (McDonald Decl. ¶ 2).

1 Apparently, after the retainer agreement was signed, M&G has “represented Bosch in patent
2 prosecution matters up to and including March, 2014.” Docket No. 60 (Taylor Decl. ¶ 16); *see also*
3 Docket No. 61 (de Blank Decl. ¶ 14).

4 In December 2007, a press release was issued stating that the “Bosch Group” had acquired a
5 majority shareholding in Health Hero Network. *See* Docket No. 80-12 (McDonald Decl., Ex. M)
6 (press release). Health Hero was the company that originally owned the patents at issue. Previously
7 (in January 2007), Cardiocom – through its counsel M&G – had declined taking a license on any
8 patents from Health Hero. *See* Docket No. 80-2 (letter).

9 In December 2011, RBHS was formally incorporated. *See* Docket No. 81-2 (McDonald
10 Decl., Ex. N). Shortly thereafter, RBHS merged with Health Hero. *See* Docket No. 80 (McDonald
11 Decl. ¶ 10). Presumably, that is when RBHS obtained ownership of the patents at issue.

12 In July 2012, RBHS filed its first patent infringement lawsuit against Cardiocom. The
13 lawsuit (No. C-12-3864 EJD) was filed in this District and was eventually assigned to Judge Davila
14 (“EJD case”). *See* Docket No. 61 (de Blank Decl. ¶ 15). The EJD case concerned patents different
15 from those at issue but they appear to be related patents.

16 At about the time the complaint was filed in the EJD case, RBHS and Cardiocom had a
17 meeting regarding the Health Hero patent portfolio. Cardiocom brought to the meeting an attorney
18 from M&G (Daniel W. McDonald). In fact, RBHS’s in-house counsel (Garry Mathis) handed a
19 copy of the complaint in the EJD case to the M&G attorney. *See* Docket No. 80 (McDonald Decl. ¶
20 3). In or about August 2012, M&G formally made an appearance on behalf of Cardiocom in the
21 EJD case. *See* Docket No. 61-14 (de Blank Decl., Ex. 14) (order granting pro hac vice application).
22 At that point, RBHS did not move to disqualify M&G. Nor did RBHS subsequently move to
23 disqualify M&G at any point in the EJD case (which is still pending).

24 In October 2012, Cardiocom moved to stay the EJD case because it had asked the PTO for
25 reexaminations of the patents at issue in the case. *See Robert Bosch Healthcare Sys., Inc. v.*
26 *Cardiocom, LLC*, No. C-12-3864 EJD (Docket No. 19) (motion). In December 2012, Judge Davila
27 granted the motion. *See id.* (Docket No. 43) (order). No further substantive litigation has taken
28 place in the EJD case because of the stay.

1 In April 2013, RHBS filed the instant lawsuit against Cardiocom, asserting different patents.
2 *See* Docket No. 1 (complaint). The lawsuit was initially filed in the Eastern District of Texas.
3 Shortly thereafter, in May 2013, M&G made an appearance on behalf of Cardiocom before the
4 Texas court. *See* Docket No. 12 (application for pro hac vice). At that point, RBHS did not move to
5 disqualify M&G.

6 In June 2013, Cardiocom moved to transfer the instant case to this District, *i.e.*, because of
7 the EJD case. *See* Docket No. 15 (motion). Many months later, in March 2014, the Texas judge
8 granted the motion, and thus this case was transferred to this Court. *See* Docket No. 51 (order).
9 Only after the case was transferred did RBHS file the currently pending motion to disqualify M&G
10 (in April 2014).

11 In March 2014, Robert Bosch LLC appears to have terminated the attorney-client
12 relationship with M&G (at least with respect to patent matters). *See* Docket No. 86-1 (de Blank
13 Reply Decl., Ex. A) (e-mail); Docket No. 116-3 (Supp. Taylor Decl. ¶ 16).

14 II. DISCUSSION

15 A. Legal Standard

16 Two ethical duties are entwined in any attorney-client
17 relationship. First is the attorney's duty of confidentiality, which
18 fosters full and open communication between client and counsel,
19 based on the client's understanding that the attorney is statutorily
obligated to maintain the client's confidences. The second duty is the
attorney's duty of undivided loyalty to the client. These ethical duties
are mandated by the California Rules of Professional Conduct.

20 *City & County of San Francisco v. Cobra Solns., Inc.*, 38 Cal. 4th 839, 846 (2006).

21 "Where the potential conflict is one that arises from the *successive* representation of clients
22 with potentially adverse interests, the courts have recognized that the chief fiduciary value
23 jeopardized is that of client *confidentiality*." *Flatt v. Superior Court*, 9 Cal. 4th 275, 283 (1994). In
24 contrast, "[t]he primary value at stake in cases of simultaneous or dual representation is the
25 attorney's duty – and the client's legitimate expectation – of *loyalty*, rather than confidentiality." *Id.*
26 at 284.

27 Nevertheless, that does not mean there is no duty of loyalty in a successive representation
28 scenario. *Cf., e.g., Damron v. Herzog*, 67 F.3d 211, 214 (9th Cir. 1995) (in applying Idaho law,

1 concluding that there is still a continuing duty of loyalty “with respect to matters substantially
2 related to the initial matter of engagement”). Nor does that mean there is no duty of confidentiality
3 in a concurrent representation scenario. *See Cobra Solns.*, 38 Cal. 4th at 847 (stating that the duty of
4 confidentiality is an “enduring duty”).

5 In deciding disqualification motions, courts consider whether there has been a violation of
6 either duty or whether such a violation is threatened. *See, e.g., Corns v. Laborers Int'l Union of N.*
7 *Am.*, No. 09-CV-4403 YGR, 2014 U.S. Dist. LEXIS 44996, at *4-5 (N.D. Cal. Mar. 31, 2014)
8 (stating that, “[u]nder California law, disqualification of counsel is employed to protect the integrity
9 of the judicial process by enforcing counsel’s duties of confidentiality and loyalty”). “Whether to
10 disqualify counsel is a matter firmly committed to the district court’s discretion.” *Id.* at *4.
11 “Generally, motions to disqualify counsel are disfavored since they may ‘pose the very threat to the
12 integrity of the judicial process that they purport to prevent.’ Thus, the Ninth Circuit has held that
13 requests for disqualification ‘should be subjected to particularly strict judicial scrutiny.’” *Id.* at *5-6.

14 B. Parties’ Arguments

15 RBHS argues for disqualification of M&G on several grounds:

- 16 (1) Based on the September/October 2007 retainer agreement, which covers all North American
17 Bosch entities, RBHS is a current client of M&G. Therefore, when M&G simultaneously
18 represented RBHS and Cardiocom, M&G breached its duty of loyalty to RBHS. Because
19 RBHS is a current client, it does not matter whether M&G’s representation of RBHS is on a
20 matter unrelated to the current lawsuit. *See Flatt*, 9 Cal. 4th at 284 (stating that, “[e]ven
21 though the simultaneous representations may have *nothing* in common, and there is *no* risk
22 that confidences to which counsel is a party in the one case have any relation to the other,
23 disqualification may nevertheless be *required*”).
24 (2) Even if the September/October 2007 retainer agreement does not make RBHS a current
25 client of M&G, RBHS should still be treated as a current client because M&G clearly has
26 Robert Bosch LLC as a current client and Robert Bosch LLC oversees all legal issues for
27 RBHS. Thus, for conflict purposes, RBHS and Robert Bosch LLC should be treated as a
28

1 single entity. If the two are treated as a single entity, then again there is a simultaneous
 2 representation of RBHS and Cardiocom, which is a violation of the duty of loyalty.

3 (3) There is a presumed threat to the duty of confidentiality because, when M&G previously
 4 represented other Bosch entities, including Robert Bosch LLC, it was exposed to the Bosch
 5 patent-related strategies, and those strategies will inform how RBHS prosecutes the litigation
 6 herein.

7 In opposition, Cardiocom makes several arguments in response – *e.g.*, contending that RBHS
 8 and Robert Bosch LLC cannot be deemed a single entity for purposes of evaluating conflicts.

9 Cardiocom also asserts that, even if there were any conflict, RBHS impliedly waived its right to
 10 disqualify M&G because RBHS knew about the conflict as early as 2007 and certainly no later than
 11 2012 (*i.e.*, when M&G appeared for Cardiocom in the EJD case).

12 C. Implied Waiver

13 The Court addresses the implied waiver issue first – *i.e.*, because it could moot out the
 14 analysis as to whether there are in fact grounds for disqualification. *See Trust Corp. of Mont. v.*
Piper Aircraft Corp., 701 F.2d 85, 87 (9th Cir. 1983) (stating that “[i]t is well settled that a former
 15 client who is entitled to object to an attorney representing an opposing party on the ground of
 16 conflict of interest but who knowingly refrains from asserting it promptly is deemed to have waived
 17 that right”).²

18

19 ² RBHS contends that, while delay may be a reason to preclude disqualification in a
 successive representation scenario, it is not a reason to preclude disqualification in a simultaneous
 representation scenario (as here). *See Reply at 12.* RBHS’s position is not without any support.
See, e.g., Cal. Earthquake Auth. v. Metro. W. Secs., LLC, 712 F. Supp. 2d 1124, 1133 (E.D. Cal.
 20 2010) (noting “it is not clear that delay is a factor that should be taken into account . . . in a situation
 involving concurrent, as opposed to successive, representation”); *State Farm Mut. Auto. Ins. Co. v.*
Fed. Ins. Co., 72 Cal. App. 4th 1422, 1435 (1999) (stating that “[t]he need to protect clients justifies
 21 applying different standards to conflicts between current clients and conflicts between former and
 current clients[.] [b]y not allowing implied waivers of a conflict between co-parties, the law places
 22 all of the burden of disclosure and consent on the attorney, where it belongs”). However, the Court
 23 is not convinced.

24 First, *River West, Inc. v. Nickel*, 188 Cal. App. 3d 1297 (1987), indicates that a court
 25 examines unreasonable delay and resulting prejudice as a matter of equity. *See id.* at 1309. It is not
 26 clear that equity should automatically be trumped just because a client is a current client rather than
 27 a former client. Second, in *TransPerfect Global, Inc. v. MotionPoint Corp.*, No. C-10-02590 CW
 28 (JCS), 2012 U.S. Dist. LEXIS 85649 (N.D. Cal. June 20, 2012), Judge Spero pointed out that, even
 in a case involving simultaneous representation, disqualification may not be permitted where

1 For purposes of this opinion, the Court assumes that RBHS knew that M&G was
2 representing Cardiocom as of 2012 (*i.e.*, when M&G appeared for Cardiocom in the EJD case). The
3 question is whether RBHS also knew at that time that M&G had previously represented or was
4 representing other Bosch entities. If so, then implied waiver would be clear.

5 RBHS contends that it did not have such knowledge, and there is little evidence to suggest to
6 the contrary. However, in 2012, *Robert Bosch LLC* did have knowledge of M&G's representation of
7 various Bosch entities. *See Docket No. 116-13 (Supp. Taylor Decl. ¶ 5)* (testifying that "Robert
8 Bosch LLC provides oversight in the selection of outside counsel for an intellectual property
9 engaged conducted by RBHS or any of the other Bosch affiliated entities in North America").
10 According to Cardiocom, in 2012, Robert Bosch LLC must also have known that M&G was
11 representing Cardiocom in the EJD case since (according to RBHS's own evidence) "[a]ttorneys at
12 Robert Bosch LLC oversee and are responsible for all legal issues of the Bosch affiliated entities in
13 North America, including, without limitation, intellectual property issues." Docket No. 60 (Taylor
14 Decl. ¶ 5).

15 Notably, RBHS failed to address this predicament in either its opening motion or its reply
16 brief in support. Only after the Court allowed RBHS to provide additional evidence post-hearing
17 did RBHS offer evidence to support the claim that Robert Bosch LLC would not have known in
18 2012 about M&G's representation of Cardiocom in the EJD case. As stated in the supplemental
19 Taylor declaration, Robert Bosch LLC would not have known about M&G's representation because,
20 even though Robert Bosch LLC is responsible for all legal issues for all North American Bosch
21 entities, it "focuses on substantive and procedural issues and considerations in the intellectual
22 property matters it supervises" and "does not attempt to keep track of the lawyers or law firms that
23 have been retained by opposing parties or third parties in litigation or patent office proceedings."
24 Docket No. 116-3 (Supp. Taylor Decl. ¶ 10). According to the supplemental declaration, Robert
25
26

27 "tactical abuse motivates the disqualification motion," and, "[i]n determining whether tactical abuse
28 motivates the disqualification motion, it is common sense to look for any unexplained delay from the
moving party that evidences such a motivation." *Id.* at *38.

1 Bosch LLC did not actually learn about M&G's representation of Cardiocom until approximately
 2 March 2014. *See* Docket No. 116-3 (Supp. Taylor Decl. ¶ 12).

3 The Court has serious doubts about the above claims made in the supplemental Taylor
 4 declaration. Although the supplemental declaration asserts that Robert Bosch LLC does not keep
 5 track of who represents parties adverse to Bosch in litigation or patent office proceedings, that
 6 assertion strains credulity. It is hard to imagine any lawyer who would not make any inquiry as who
 7 is representing the opposing party. Nor does it make sense that an overseer of litigation would not
 8 attribute any significance to that information. As for the claim that Robert Bosch LLC did not
 9 actually know about M&G's representation of Cardiocom until March 2014, that is simply a naked
 10 claim, *i.e.*, a claim made in extremely conclusory terms. Notably, there are no facts in the
 11 supplemental declaration addressing the circumstances under which Robert Bosch LLC purportedly
 12 learned of this information for the first time. Nor does the e-mail of February 28, 2014, which
 13 RBHS submitted for in camera review, shed any light on the circumstances.

14 Accordingly, the Court is inclined to find in Cardiocom's favor on its case for implied
 15 waiver.³ The Court, however, need not rest its decision to deny the disqualification motion based on
 16 implied waiver. This is because, even absent a waiver, there is no basis for disqualification of
 17 M&G.

18 D. Retainer Agreement

19 As noted above, RBHS argues first that M&G should be disqualified because M&G is
 20 simultaneously representing both RBHS and Cardiocom. According to RBHS, M&G is currently
 21 representing RBHS because of the September/October 2007 retainer agreement discussed above,
 22 which covers all North American Bosch entities. The Court is not persuaded. At the time of the
 23 retainer agreement, RBHS did not even exist and did not exist until approximately four years later.
 24 Nothing in the retainer agreement suggests that it would apply to future Bosch entities. Any

25
 26 ³ To the extent RBHS argues that Cardiocom would not be prejudiced by disqualification of
 27 M&G, *see River W.*, 188 Cal. App. 3d at 1313 ("find[ing] the delay in making the disqualification
 28 motion so unreasonable and the resulting prejudice so great that the law must assume an implied
 waiver of the right to disqualify"), the Court does not agree. Cardiocom has worked with M&G
 since at least 1999, and clearly the relationship between the two has been significant since at least
 2012 when RBHS filed the EJD case against Cardiocom and Cardiocom hired M&G to represent it.

1 ambiguity in the retainer agreement should be construed against RBHS given that its affiliate,
 2 Robert Bosch LLC, was the entity who drafted the agreement. *See Victoria v. Superior Court*, 40
 3 Cal. 3d 734, 745 (1985) (stating that “[i]t is a well-settled rule of law that ambiguities in a written
 4 contract are to be construed against the party who drafted it”).

5 E. RBHS and Robert Bosch LLC as Single Entity

6 According to RBHS, it should still prevail on the disqualification motion because, even
 7 without the retainer agreement, it should still be treated as a client of M&G by virtue of its
 8 relationship with Robert Bosch LLC, which is undisputedly a client of M&G. *See Reply at 5.*

9 In one of its formal opinions, the State Bar of California addressed a similar issue – *i.e.*,
 10 whether an attorney which currently represents a parent corporation may simultaneously represent a
 11 party that is adverse to a subsidiary of the parent corporation. *See Formal Op. No. 1989-113,*
 12 *available at* 1989 WL 253261. The State Bar noted that, ordinarily an “attorney owes undivided
 13 allegiance only to the corporate entity which he or she represents rather than any affiliated persons
 14 or entities.” *Id.* at *2. However, “[t]here are certain limited instances when parent and subsidiary
 15 corporations should be treated as the same client for conflict purposes.” *Id.* at *5. More
 16 specifically,

17 [w]hen a corporation is the alter ego of another entity *or has a*
sufficient unity of interests, they should be treated as the same entity
 18 for conflict purposes. In determining whether there is a sufficient
 19 unity of interests to require an attorney to disregard separate corporate
 20 entities for conflict purposes, the attorney should evaluate the
 21 separateness of the entities involved, whether corporate formalities are
 observed, the extent to which each entity has distinct and independent
 managements and board of directors, and whether, for legal purposes,
 one entity could be considered the alter ego of the other.

22 *Id.* (emphasis added).

23 As RBHS notes, *Morrison Knudsen Corp. v. Hancock, Rother & Bunshoft*, 69 Cal. App. 4th
 24 223 (1999), is an instructive case on the “unity of interests” test. There, the court underscored that
 25 the alter ego test alone should not be used as a measuring stick because, *e.g.*, it “was not developed
 26 to deal with conflicts issues and . . . does not work very well in conflicts cases.” For instance,
 27 “[m]any of the factors used to determine whether corporations are alter egos may have little or no
 28 bearing on whether they should be treated as one entity for purposes of attorney conflicts of

1 interest,” and the alter ego test “does not encompass considerations which may be central to an
2 alleged conflict.” *Id.* at 249-52. The court instead emphasized a ““pragmatic approach”” which
3 focuses on “the practical consequences of the attorney’s relationship with the corporate family. If
4 that relationship may give the attorney a significant practical advantage in a case against an affiliate,
5 then the attorney can be disqualified from taking the case.” *Id.* at 253.

6 In *Morrison* itself, the court concluded that a law firm should be disqualified from
7 representing a party adverse to a subsidiary where the firm had previously represented the parent.
8 This conclusion was informed by several considerations, including the following:

- 9 • “First, . . . in the course of the firm’s work involving the parent corporation, it received
10 confidential information which was substantially related to the present claim against the
11 subsidiary.” *Id.* at 245.
- 12 • Second, “the parent in this instance controls the legal affairs of the subsidiary. . . . [The law
13 firm’s] ongoing contacts with the people at [the parent] who would be managing [the
14 subsidiary’s] defense gave [the law firm] insight into the litigation philosophy of the
15 District’s adversary [*i.e.*, the subsidiary].” *Id.* at 246.
- 16 • Third, there were “integrated operations and management personnel” between the parent and
17 the subsidiary. *Id.*

18 In its opposition, Cardiocom acknowledges the unity of interests test and the factors that the
19 *Morrison Knudsen* court took into account. *See Opp’n at 13.* It argues, however, that these factors
20 when considered weigh against disqualification. The Court agrees.

21 While there is evidence in RBHS’s favor on the second factor (*i.e.*, that Robert Bosch LLC
22 has a hand in controlling RBHS’s legal affairs), the first factor weighs strongly against
23 disqualification. That is, there is no real evidence that, in the course of M&G’s representation of
24 Robert Bosch LLC and/or related Bosch entities, M&G received confidential information that is
25 *substantially related* to the present claims brought by RBHS against Cardiocom. For example,
26 M&G’s representation of Robert Bosch LLC and/or related Bosch entities involved technology
27 completely different from that at issue in the instant case.

28

1 RBHS protests that the substantial relationship requirement is satisfied here because M&G
2 has been exposed to Bosch's patent "play book" during the course of its representation of Robert
3 Bosch LLC and/or related Bosch entities. For example, RBHS argues that M&G – by representing
4 Robert Bosch LLC and/or related Bosch entities in patent prosecution matters and patent
5 infringement lawsuits – has been exposed to Bosch's "views of and strategy concerning the Patent
6 Office, claim scope, claim amendments, patentable subject matter, prior art, invalidity positions, and
7 potential infringement" and "view[s] of and approach to patent litigation, damages, settlement, the
8 Patent Office, post-grant review, and, specifically, the interplay between post-grant review and
9 patent litigation." Docket No. 60 (Taylor Decl. ¶¶ 16-17). RBHS also makes reference to M&G's
10 "insight into the institutional risk tolerance, preferred outcomes, litigation budgets and other
11 strategic considerations that drive litigation." Docket No. 116-3 (Supp. Taylor Decl. ¶ 13).

12 The Court is cognizant of authority holding that "[w]here an attorney acquires knowledge
13 about the former client's 'attitudes,' practices, business customs, 'litigation philosophy,' strengths,
14 weaknesses or strategy, disqualification may be required for that reason alone." *Knight v. Ferguson*,
15 149 Cal. App. 4th 1207, 1215 (2007); *see also Jessen v. Hartford Cas. Ins. Co.*, 111 Cal. App. 4th
16 698, 712-13 (2003) (stating that "[w]e consider the 'subject' of a representation as including
17 information material to the evaluation, prosecution, settlement or accomplishment of the litigation or
18 transaction given its specific legal and factual issues"). But these cases have underscored that
19 whether disqualification is warranted is dependent on the "specific legal and factual issues." *Id.*
20 "[E]xposure to *general* play book information such as a former client's general litigation or
21 settlement strategy is *not* sufficient . . ." *Hartford Casualty Insurance Co. v. American Dairy &*
22 *Food Consulting Laboratories*, No. 1:09-cv-0914 OWW SKO, 2010 U.S. Dist. LEXIS 70238 (E.D.
23 Cal. June 17, 2000) (emphasis added). Here, the Court concludes that, even taking into account the
24 supplemental Taylor declaration, RBHS has established at most exposure to general play book
25 information. It has failed to establish any more specific advantage supposedly gained by M&G's
26 prior representation. Indeed, much of the patent litigation where M&G served as counsel concluded
27 several years ago. *See* Docket No. 60 (Taylor Decl. ¶ 11); Docket No. 80-3 to -7 (McDonald Decl.,
28 Exs. O-S).] The record does not establish the *substantial* relationship requirement.

1 As for the third *Morrison Knudsen* factor, it too does not weigh in favor of disqualification.
2 That Robert Bosch LLC and RBHS “have overlapping marketing and public relation functions,”
3 Reply at 10; *see also* Docket No. 81-10 (McDonald Decl., Ex. V) (webpage from www.bosch.com,
4 titled “Bosch worldwide – About us”), does little to evidence integrated management between the
5 companies. While there may be some oversight over legal matters by Robert Bosch LLC, there is no
6 evidence of substantial management control by Robert Bosch LLC. Indeed, Cardiocom has
7 submitted evidence that prior settlement talks between RBHS and Cardiocom were directed and
8 controlled by RBHS officials, not Robert Bosch LLC. *See* Docket No. 80 (McDonald Decl. ¶¶ 3, 5).

9 Accordingly, based on the *Morrison Knudsen* test, the Court concludes that (1) there is not a
10 sufficient unity of interests between Robert Bosch LLC and RBHS such that the two should be
11 considered a single entity for conflict purposes and (2) as a result, there is no simultaneous
12 representation by M&G of both RBHS and Cardiocom. Without the simultaneous representation,
13 there is no violation with respect to the duty of loyalty. Moreover, because M&G's representation
14 of Robert Bosch LLC and/or related Bosch entities is not substantially related to the present claims
15 asserted by RBHS against Cardiocom, there is also no violation with respect to the duty of
16 confidentiality.

III. CONCLUSION

For the foregoing reasons, RBHS's motion to disqualify is denied.

This order disposes of Docket No. 59.

IT IS SO ORDERED.

23 | Dated: June 13, 2014


EDWARD M. CHEN
United States District Judge